

Members

Sen. Sue Landske, Chairperson
Sen. Becky Skillman
Sen. Billie Breaux
Sen. Allie Craycraft
Rep. Thomas Kromkowski
Rep. Ed Mahern
Rep. Robert Behning
Rep. Kathy Kreag Richardson



CENSUS DATA ADVISORY COMMITTEE

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Robert Rudolph, Attorney for the Committee
Chris Baker, Fiscal Analyst for the Committee

Authority: IC 2-5-19

MEETING MINUTES¹

Meeting Date: November 10, 2003
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington
St., Room 130
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Sen. Sue Landske, Chairperson; Sen. Billie Breaux; Rep. Ed Mahern; Rep. Robert Behning; Rep. Kathy Kreag Richardson.

Members Absent: Sen. Becky Skillman; Sen. Allie Craycraft; Rep. Thomas Kromkowski.

(1) Call to Order.

The Chair, Senator Landske, called the meeting to order at approximately 10:13 a.m.

(2) Review Constitutional Amendment Ballot Language Approved by the Code Revision Commission.

The Chair recognized Ms. Peggy Piety, Senior Staff Attorney, Legislative Services Agency, to give a report about the ballot language to place three

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amendments to the Indiana Constitution before Indiana's voters at the 2004 general election. Ms. Piety discussed LS 6115² which was approved by the Code Revision Commission. Senator Landske noted that the ballot language would probably be further refined during the upcoming session.

(3) Review PD 3534 (compilation and revision of drafts considered at previous meetings).

The Chair asked staff to review PD 3534.³ Staff noted that this draft was a combination and minor revision of PD 3098 and PD 3279, both of which the Committee reviewed at previous meetings. Staff noted the source of each SECTION and any changes that were made from the previous drafts. Changes were made in SECTIONS 2, 3, and 5 to provide for emergency training of replacement precinct election officers. The Committee also adopted an amendment in SECTION 16 to change "twenty-one (21) days" to "the Monday following the close of the registration period".

(4) Review PD 3581 (nomination of minor party candidates)

The Chair recognized Representative Richardson for discussion of PD 3581.⁴ Representative Richardson briefly discussed the draft, saying she asked for the draft in response to issues that have arisen with respect to nomination of minor party candidates.

(5) Review PD 3568 (various election law matters)

The Chair recognized Mr. Brad King, Co Executive Director of the Indiana Election Division, to present PD 3568.⁵ Mr. King reviewed the draft, SECTION by SECTION. He noted that the language in SECTION 7 was also contained in PD 3534.

Representative Mahern asked whether watchers should be able to call upon the election sheriffs to make arrests as indicated in SECTION 8 on page 4, line 30 of the draft.

There was extensive discussion of the proposed changes regarding administrative disbanding of political committees as indicated in SECTION 15 on page 9, lines 28 through 35.

2. A copy of LS 6115 is Exhibit 1 to these Minutes.

3. A copy of PD 3534 is Exhibit 2 to these Minutes.

4. A copy of PD 3581 is Exhibit 3 to these Minutes.

5. A copy of PD 3568 is Exhibit 4 to these Minutes.

Mr. King explained that the removal of the language in SECTION 30 on page 18, lines 25 through 33 relating to unauthorized distribution of slates was the result of a ruling by a federal court that the stricken language is unconstitutional.⁶ Sarah Taylor provided background information regarding the facts of the case. Some committee members asked whether an appeal of Judge Tinder's decision was planned and if making a change in the statute now was premature.

(6) Review Draft Amendment to Indiana Constitution Concerning Overseas Voters.

The Chair recognized Ms. Kristi Robertson, Co Executive Director of the Indiana Election Division, to present the draft proposed amendment to the Indiana Constitution.⁷ Ms. Robertson explained that citizens who are born overseas and have never lived in the United States usually do not have an opportunity to vote for candidates for federal offices. Typically, these citizens are children of military personnel stationed abroad. The proposed amendment would authorize the General Assembly to extend the right to vote to such citizens.

Representative Mahern asked how other states approach this issue. In response, Ms. Robertson said that she did not know how other states dealt with the issue and noted that in Indiana eligibility to vote is a matter of constitutional law, while in other states the question may be governed by statute or administrative rule.

After discussion, the Committee adopted a motion to amend the draft by deleting proposed Section 2(d)(2).

(7) Public Testimony.

No members of the public wished to speak to the Committee.

(8) Committee Action on Drafts and Annual Report.

A motion was made and seconded to recommend the enactment of PD 3534, PD 3581, PD 3568, and the draft constitutional amendment, including any amendments made to any of the drafts. The motion was adopted by a vote of 5-0 with the following members voting in favor of the motion: Senator Breaux, Representative Mahern, Representative Behning, Representative Richardson, and Senator Landske.

The Chair asked if there was a motion to approve the draft Committee

6. The case is *Ogden v. Marendt*, 264 F.Supp.2d 785 (S.D.Ind. 2003).

7. A copy of the draft proposed amendment is Exhibit 5 to these Minutes.

annual report.⁸ A motion was made and seconded to approve the draft annual report. The motion was adopted by the consent of all members of the Committee present.⁹

(9) Other Committee Business.

The Chair asked for a report from the Office of Census Data of its activities. Mark Stratton, Co Manager of the Office of Census Data, described the current work activities including the status of precinct changes in various counties. Mr. Stratton briefly discussed the continuing growth of the population of the Town of Fishers, saying there were no recent developments of interest to report regarding the special census of the town.

Representative Mahern said he wanted to raise a few issues for future consideration by members of the Committee and those interested in election law. He expressed disappointment in the manner the municipal elections were conducted in Marion County. He said he was particularly concerned about the confusion about the certification or lack of certification of the absentee ballot counting machine. He said he wanted to better understand what the problem was and who was responsible for causing it.

The second question relates to the impasse at which the Indiana Election Commission finds itself over tie votes. He said that the Commission cannot continue failing to decide questions on 2-2 votes. The General Assembly eventually must solve this problem. In relation to this issue, he said that he understood that someone had ostensibly "approved" the disputed "A-Team" logo that the Marion County Republican Party had attempted to use during the municipal elections in Marion County. Representative Mahern asked if this assertion was true and, if so, who gave the "approval".

Finally, Representative Mahern asked when the Commission last met, what took place at the Commission's June meeting, and what actions have been taken, if any, since the June meeting.

Senator Landske noted that legislation has been introduced in previous sessions that would permit the Secretary of State to break ties that occur in Commission votes. Representative Mahern responded that he would prefer the Governor to have the tie-breaking vote.

One committee member noted that it was the Commission's responsibility to certify ballot counting systems and that the problem in Marion County was related to the decision to count absentee ballots at a central location. There was discussion among Committee members about the wisdom of counting absentee

8. A copy of the draft "Annual Report" is Exhibit 6 to these Minutes.

9. Those present were Senator Breaux, Representative Mahern, Representative Behning, Representative Richardson, and Senator Landske.

ballots at a central location.

Representative Richardson stated that shortly after the central count option was approved by the General Assembly in the early 1990s, it was not uncommon that counting of absentee ballots would take weeks. She said that the use of provisional ballots beginning with the 2004 elections will cause even more problems. Representative Richardson said she was confident that if the Marion County Election Board had known there was a problem with certification of the absentee ballot counting machine, the Board would not have adopted the central count option.

Representative Behning noted that the central count option could not have been approved in Marion County if any of the county election board members had objected. He said he would direct questions to the Mayor's office as to what the county's contract with the voting systems vendor provided with respect to the issue of certification. Representative Behning also said he had assisted counting absentee ballots after the election and believes that there would have been delays as long if the absentee ballots had been counted by the optical scan machines in the precincts. Absentee ballots were being rejected by the counting machine at a high rate because of apparent voter errors filling out the optical scan ballot sheets. Representative Behning said he suspected elderly voters had had trouble completing their ballots.

Mr. King stated that with respect to the validity of the "A-Team" logo, IC 3-8-7-11(e) governs the question of ballot "devices". This statute requires devices to be filed with the county election board. In the case of local elections, devices are filed with the Commission only as a matter of courtesy and for informational purposes. Mr. King said he believed that the issue regarding the legality of the "A-Team" logo is involved in a case currently pending before the Indiana Court of Appeals.

The Chair noted that while a grand jury is continuing its investigations of primary election activities in Lake County, the November municipal elections proceeded smoothly.

Representative Richardson told the Committee that she may be introducing some ideas to solve problems that occurred in connection with the recount of write-in votes in the Town of Westfield.

(10) Adjournment.

The Chair adjourned the meeting at approximately 11:50 a.m.